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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1955**

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# No. 443

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NORMAN LUMBER COMPANY,
*Petitioner,*

*vs.*

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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## REPLY BRIEF FOR THE PETITIONER NORMAN LUMBER COMPANY

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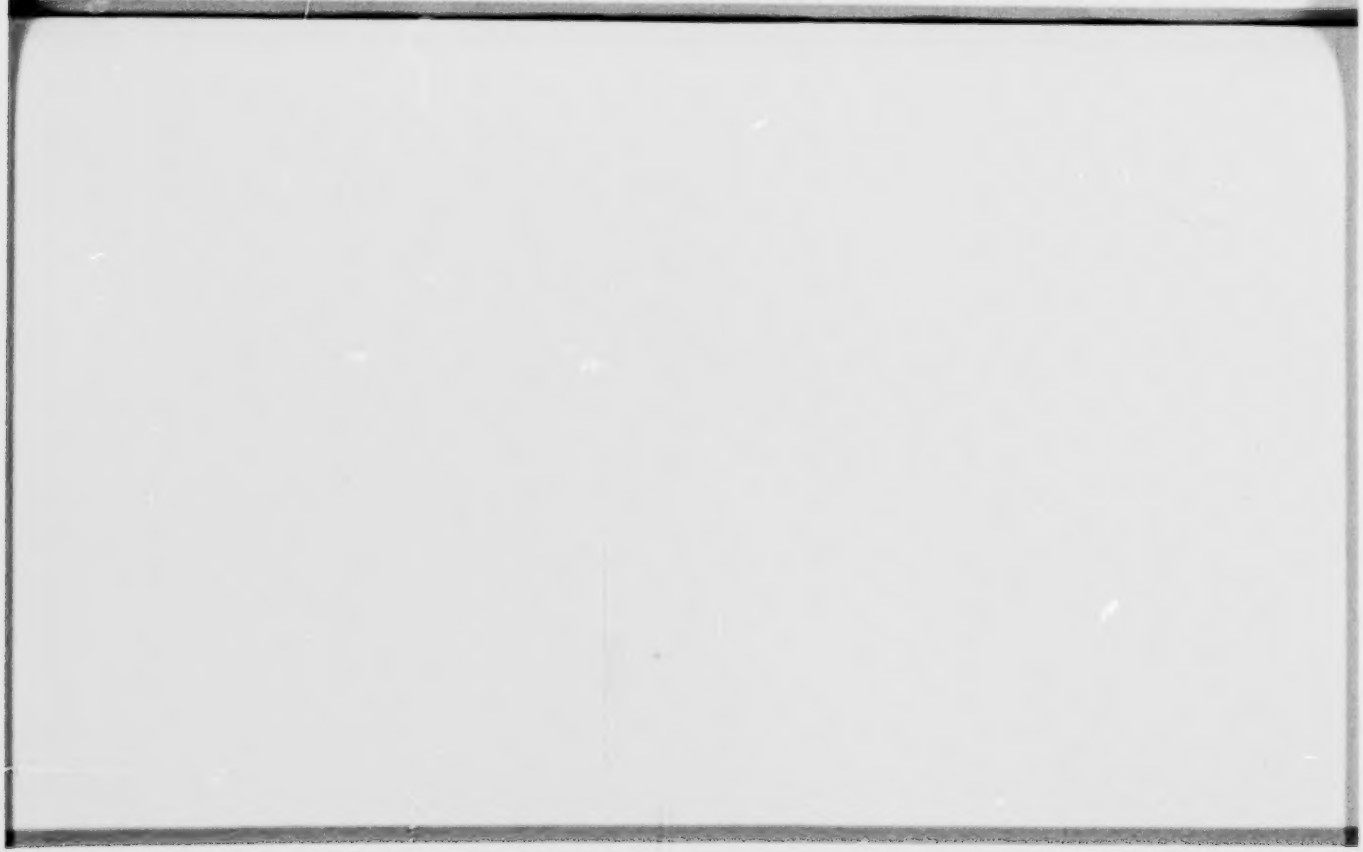
*Counsel for Petitioner.*



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### Question Presented

The fallacies in the argument set out in the brief for the United States in opposition to the petition for certiorari are as follows:

*First*, it begs the question by stating the issue differently from that agreed upon, and

*Second*, the cases cited are in point only on such changed issue.

The stipulation agreed upon established the fact that the Norman Lumber Company was the purchaser for value without notice of the proceeding in question. Both parties are bound thereby. It was nowhere stipulated or

conceded that the United States had acquired title complete as against all the world. It was not a question of *divesting* the United States of land that it owned, but a question of whether or not it owned it in the first place as against an innocent purchaser for value without notice of the proceeding.

Only in cases of a declaration of taking does the United States acquire title absolute and good as against all the world. Such proceeding is resorted to only in cases of emergency. The proceeding in question was not an emergency taking and it cannot reasonably be said that the title acquired by the United States in such condemnation proceeding is good as against all the world—even though it may be a complete or new title as against all parties to the proceeding. Certainly it cannot be contended that such title is good against that part of the world not parties to the proceeding. Only by proper registration can it be made so.

The issue in this case—"Must a Federal Judgment of condemnation of land be indexed and cross-indexed in the county where the land lies in order to give notice to a purchaser for value wit[illegible]ut notice of the proceeding", presents a new and undecided question for the determination of the court. It was so considered by all on the hearing in the court below. The Opposition Brief of the United States here concedes it when it says, "The instant case as petitioner itself recognizes is the only one to arise" out of the vast number of condemnation proceedings. Thus it is conceded by all that the issue is new. It thereby inevitably follows that the citations relied upon in the opposition brief of the United States are not in point and are not decisive of the question involved. The several cases relied upon by the United States have been analyzed in the petitioner's Reply Brief in the court below and no one of the authorities is decisive of, or in point with the issue to be

answered here. It is assumed in each and all of them that the United States had acquired title against all the world. If it were conceded that the United States Government got title to the land against all the world, then there would be nothing to decide in this case.

It is true that this is the first case to reach this Court involving the issue to be answered. It is the first time it has come to the attention of the court that the United States has failed to follow out the direct and positive order of its own court to properly record its muniment of title in the county where the land lies; and it is probably the first time the United States has failed to record its muniment of title by registration as required by appropriate statutes enacted for the protection of innocent purchasers for value. The registration statutes have been enacted for the protection of the innocent—that is, for the protection of that part of the world not parties to the contract or proceeding. The soundness of a large part of the business structure in the United States is based on the faith of the registration laws and the reliance upon their integrity.

There is no basis for the assertion in the opposition brief that the petition does not challenge the legal reasoning of the courts below. The petitioner deemed it inappropriate to argue the merits of the case in its petition for certiorari, but only set forth the importance of having an adjudication made by this Court. We most certainly challenge the reasoning of the courts below—why should both the courts below advance as a reason for their opinion that "The United States cannot always have watchers present to observe trespassers who may go upon public lands and commit waste while the private owner does have an opportunity to keep an eye on his property".

We challenge this reasoning as unsound and only as an excuse for the failure of the United States to properly record its title, for it is common knowledge that when the

United States once properly records its muniment of title—either deed or decree, then and from thenceforward its title is fully protected without "watchers" and it cannot be divested by adverse possession or otherwise against its will.

The most vital part of the procedure in the condemnation of land is the proper recordation and indexing of the decree. It is just as vital as the recording and indexing of deeds. It is an argument without reason or merit that the United States in a condemnation proceeding acquire title to the land against all the world at the instant the decree is signed. If such were true it would not be necessary for the judgment to be indexed and cross-indexed even in the court where entered. It is humanely impossible to index and cross-index the judgment instantaneously with the signing thereof. Thus it is obvious that so far as innocent purchasers for value are concerned they cannot be put on notice the instant of signing the judgment. The judgment based on the proceeding is the muniment of title of the United States to the land just as a deed executed to it by the owners of the land would be. The judgment of condemnation in question so declared. We submit that no court in a well considered opinion could reasonably hold that such muniment of title, whether decree or deed, unrecorded and unindexed, would support an action against an innocent purchaser for value of the same land who first recorded his deed or other muniment of title thereto. It would not only be contrary to all the statutes of recordation, but contrary to all principles of equity.

Respectfully submitted,

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